

BEFORE THE STATE BOARD OF TAX APPEALS  
STATE OF ARIZONA  
Bank of America Tower  
101 North First Avenue - Suite 2340  
Phoenix, Arizona 85003  
(602) 528-3966

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5 ROBERT LEE, JR., )  
6 Appellant, ) Docket No. 1821-99-1  
7 vs. )  
8 ARIZONA DEPARTMENT OF REVENUE, ) NOTICE OF DECISION:  
9 Appellee. ) FINDINGS OF FACT AND  
 ) CONCLUSIONS OF LAW

10 The State Board of Tax Appeals, having considered all evidence and arguments presented, and  
11 having taken the matter under advisement, finds and concludes as follows:

12 FINDINGS OF FACT

13 The Arizona Department of Revenue (the "Department") learned that Robert Lee, Jr.  
14 ("Appellant") filed a 1994 federal income tax return, but did not file an Arizona return for that year.  
15 Consequently, the Department issued an assessment of income tax, interest, and penalties for failure to  
16 file when due and negligence for tax year 1994. Appellant protested the assessment to the Department's  
17 Hearing Officer, who upheld the assessment. Appellant then protested to the Director, who affirmed the  
18 Hearing Officer's decision. Appellant now timely appeals to this Board.

19 DISCUSSION

20 The issue before the Board is whether Appellant is liable for the tax, interest and penalties  
21 assessed. Appellant bears the burden of proof as to all issues of fact. A.A.C. R16-3-118.

22 The Arizona Constitution authorizes the legislature to levy and collect taxes. Ariz. Const. art. IX,  
23 § 12. Accordingly, the legislature has enacted Titles 42 and 43 of the Arizona Revised Statutes  
24 ("A.R.S."). The Department, its Director and employees have the authority to administer and enforce  
25 Title 42 and 43 and have all the powers and duties prescribed by law for such purposes. A.R.S. § 42-  
26 104.

27 A.R.S. § 43-1011 provides that "[t]here shall be levied, collected and paid for each taxable year  
28 upon the entire taxable income of every resident of this state taxes." A "resident"

1 of Arizona is "an individual who is in this state for other than a temporary or transitory purpose." A.R.S.  
2 § 43-104(19)(a). An "individual" is a "natural person." A.R.S. § 43-104(12).

3 Appellant has not contested the fact that he was in Arizona in 1994 for other than a temporary or  
4 transitory purpose. A.R.S. § 43-104(19)(a). Therefore, Appellant is a resident of Arizona subject to the  
5 levy of income tax. A.R.S. § 43-1011.

6 The interest at issue may not be abated because it represents a reasonable interest rate on taxes  
7 due and owing and is made part of the tax by statute. See A.R.S. § 42-1123; see also *Biles v. Robey*, 43  
8 Ariz. 276, 30 P2d 841 (1934). The penalties at issue may not be abated because Appellant has not  
9 shown that his failure to timely file was due to reasonable cause and not wilful neglect. A.R.S. § 42-  
10 1125(A) and (F).

11 CONCLUSIONS OF LAW

- 12 1. Appellant is liable for the tax assessed. See A.R.S. § 43-1011.
- 13 2. The interest at issue may not be abated because it represents a reasonable interest rate on  
14 taxes due and owing and is made part of the tax by statute. See A.R.S. § 42-1123; see also *Biles v.*  
15 *Robey*, 43 Ariz. 276, 30 P2d 841 (1934).
- 16 3. The penalties at issue may not be abated because Appellant has not shown that his failure to  
17 timely file was due to reasonable cause and not wilful neglect. A.R.S. § 42-1125(A) and (F).

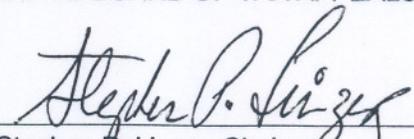
18 ORDER

19 THEREFORE, IT IS HEREBY ORDERED that the appeal is denied, and the final order of the  
20 Department is affirmed.

21 This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer,  
22 unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

23 DATED this 13<sup>th</sup> day of June , 2000.

24  
25 STATE BOARD OF TAX APPEALS

26   
27 Stephen P. Linzer, Chairman  
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1 SPL:ALW  
2 CERTIFIED

3 Copies of the foregoing  
4 mailed or delivered to:

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